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Divorce and legal separation



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(in civil and commercial
matters)

1 What are the conditions for obtaining a divorce?

The law lays down the legal requirements for divorce (see section 2). The court must verify that the legal requirements for issue of the divorce order are met.

These checks must be carried out even if the two spouses lodge a joint application for divorce. The agreement of the spouses is not in itself a ground for divorce – in reality, therefore, there is no such thing in Italy as a divorce by mutual consent: the court must always establish the facts underlying the application before granting a divorce.

If the marriage was contracted under the Civil Code, the divorce dissolves it, and if the parties were married in church, with the marriage being duly recorded in the civil register of births, marriages and deaths, the divorce terminates its effects in civil law. The public prosecutor must take part in the proceedings.

Sources: Law No 898 of 1 December 1970, as amended by Law No 436 of 1 August 1978, by Law No 74 of 6 March 1987 and by Law No 55 of 6 May 2015.

2 What are the grounds for divorce?

Either spouse may apply for divorce on any of the following grounds:

1) where, after the wedding has taken place, the other spouse is sentenced by final judgment for a particularly serious crime, whether committed before or after the wedding, namely:

sentenced to life imprisonment or to a term of imprisonment of more than 15 years, which may be the sum of a number of sentences, for intentional offences, with the exception of political offences or offences committed for 'motives of special moral and social value' (*motivi di particolare valore morale e sociale*);

sentenced to a custodial sentence for incest (Article 564 of the Criminal Code) or sexual offences under Articles 609-bis (sexual abuse), 609-quater, 609-quinquies, or 609-octies (which were introduced by Law No 66 of 15 February 1996);

sentenced to a custodial sentence for murdering a son or daughter or for the attempted murder of the spouse or of a son or daughter;

sentenced to a custodial sentence, where the person has been found guilty on two or more counts of grievous bodily harm, failure to fulfil family support obligations, mistreatment in the family or of minors, or undue influence on persons not of sound mind at the expense of the spouse or children, except where the applicant for divorce has also been convicted as an accessory to the offence or where the couple have resumed cohabitation;

2) in cases where:

the other spouse has been acquitted of the offences of incest or sexual abuse mentioned in points 1b) and c), if

the court establishes that the respondent is unfit to continue or return to living with the family;

the couple have been legally separated, either by mutual consent or on the application of one of the parties, for an uninterrupted period of

1. at least 12 months since the couple appeared before the court in legal separation proceedings;
2. 6 months in the event of separation by mutual consent, including when a disputed judgment is mutually settled;
3. or 6 months from the certified date given in the separation agreement reached following negotiations attended by a lawyer, or from the date of the deed setting out the separation agreement concluded before a civil registrar;

criminal proceedings regarding one of the offences listed under points 1b) and c) were discontinued because the offence was time-barred, but the divorce court establishes that the offence in itself would otherwise have given rise to criminal liability;

criminal proceedings regarding the offence of incest ended with a finding that there was no criminal liability because the act did not create 'a public scandal';

the other spouse, being a foreign national, has obtained the annulment or dissolution of the marriage abroad or has entered into a new marriage abroad;

the marriage has not been consummated;

one of the spouses has officially changed sex: in this case the divorce application may be submitted either by the person who has changed sex or by the other spouse.

In summary, apart from the 'criminal law' scenarios (which include, in addition to convictions for serious offences, cases where the person is acquitted on the grounds of diminished responsibility, cases where the offence is time-barred, and cases of incest where the objective requirement for criminal liability is missing), the possible grounds for divorce are: legal separation; annulment, dissolution or a new marriage entered into by the other spouse abroad; non-consummation of the marriage; and change of sex.

3 What are the legal consequences of a divorce as regards:

3.1 the personal relations between the spouses (e.g. the surname)

The granting of a divorce entails the following.

Firstly, the marriage relationship is dissolved: each party reverts to single status and is free to remarry.

The woman loses the husband's surname, if she has added it to her own; however, on application, the court may allow the woman to retain her husband's surname in addition to her own, where this is shown to be in her interest or in the children's interest for reasons that merit protection.

Divorce does not break the ties of affinity, and in particular it does not set aside the impediment to marriage constituted by affinity in the direct line (Article 87(4) of the Civil Code).

Foreign spouses do not lose the citizenship they acquired through marriage.

3.2 the division of property of the spouses

The divorce dissolves the joint estate established by law (*comunione legale*, which includes all purchases made by the spouses jointly or separately during the marriage, apart from the personal items listed in Article 179 of the Civil Code) and also any fund set aside for the needs of the family (*fondo patrimoniale*). However, such a fund continues to exist until any children have reached the age of majority. Divorce has no effect on joint property governed by other arrangements (*comunione ordinaria*, for example goods acquired prior to the marriage pro rata, or during the marriage where at the time of the marriage it was provided that the spouses' property would be held separately (*separazione dei beni*)): the link in respect of joint property of this kind may be dissolved on application by one of the spouses.

A parent who lives with a minor child may be granted the right to continue to live in the former couple's home where it is in the child's interest to remain in that home.

3.3 the minor children of the spouses

The court granting the divorce will award joint custody of minor children; only in exceptional cases are the children placed in one parent's exclusive custody. The court also establishes the rules on the time to be spent by the minor children with the non-cohabiting parent; gives instructions regarding the administration of the children's property; and sets the monthly contribution towards the children's maintenance to be paid to the cohabiting parent.

3.4 the obligation to pay maintenance to the other spouse?

When granting the divorce, the court, on application by a party, orders regular payment of maintenance to a party who lacks sufficient means or who is unable to procure them for objective reasons. The obligation to pay maintenance ceases if the recipient remarries. Where both parties are in agreement, support may also be paid in a single transaction by transferring ownership rights on a property to the benefiting spouse (for more details see ['Maintenance claims - Italy'](#)).

Spouses who fail to pay maintenance in the event of separation or after divorce commit the offence of failing to assist their family (Article 570 of the Criminal Code).

Other effects A spouse who is divorced but has not remarried and who is entitled to maintenance is also entitled to a share of any severance payment made to the other spouse. In the event of the death of a former spouse, the surviving former spouse is entitled to receive any survivor's pension, or to share such a pension with any subsequent surviving spouse, and to receive a payment from the deceased's estate, if he or she is in financial hardship. The law also allows a spouse entitled to maintenance to register a judgment mortgage or apply for seizure of the assets of the spouse required to pay support.

4 What does the legal term "legal separation" mean in practical terms?

Legal separation means that the law no longer requires the spouses to live together. Mere de facto separation is without effect (except in situations arising prior to Reform Law No 151 of 22 May 1975).

Legal separation does not cancel the marriage relationship but weakens it.

Legal separation may be by order of the court or by mutual consent.

Sources: the substantive rules are set out in the Civil Code (Articles 150 *et seq.*; on questions regarding inheritance see Articles 548 and 585).

5 What are the conditions for legal separation?

Judicial separation – i.e. separation by order of the court - requires a finding that the spouses are no longer able to live together.

Where this condition is met the court will issue a separation order, at the request of one of the two spouses, even against the other's wishes.

In exceptional cases, the court may also place responsibility for the separation on one of the spouses: this has implications for the award of maintenance during separation and after divorce, and for inheritance rights. The public prosecutor takes part in the proceedings.

Legal separation by mutual consent is based on an agreement between the spouses, but becomes effective only after approval by the court, which is responsible for ensuring that the agreements reached by the spouses meet the family's overriding interests. In particular, where an agreement regarding child custody and support is not in the interest of the children, the court will reconvene the parties and request the necessary changes. Where the parties fail to comply, the court may refuse to approve the separation.

6 What are the legal consequences of legal separation?

Personal relationships: legal separation (by order of the court or by mutual consent) removes the requirement for all forms of assistance associated with living together. It also removes the presumption of paternity. The wife does not lose the husband's surname if she has added it to her own, but at the husband's request the court may forbid her to use it where such use may cause him serious harm. Likewise, the court may allow the wife to refrain from using the husband's surname where such use may be to her detriment.

Ownership of joint property: the joint estate is dissolved upon a declaration of the absence or presumed death of one of the spouses, the annulment, dissolution or cessation of the civil effects of the marriage, legal separation, judicial separation of assets, the mutually agreed change to the matrimonial relationship, or one of the spouses being declared bankrupt.

In the event of legal separation, the property owned jointly by the spouses is dissolved when the court authorises the spouses to live separately, or from the date on which the minutes of the mutually agreed separation between the spouses are signed before the presiding judge, provided they are approved. The order authorising the spouses to live separately is sent to the civil registrar so that the dissolution of the joint estate can be recorded.

Parental responsibility: the court granting the separation rules on the custody of any minor children establishes the amount of child support payable by the non-cohabiting parent (with whom the minor does not live) or, in the exceptional case of sole custody, the parent to whom custody is not granted. In the award of the right to live in the family home, the parent living with the child is given priority (for more details see 'Parental responsibility - Italy').

Awarding of maintenance: if requested, the court grants the spouse not responsible for the separation the right to maintenance from the other spouse, if he or she does not have sufficient independent means. A spouse in need is still entitled to receive maintenance, i.e. a regular sum needed for subsistence, even if he or she is responsible for the separation (for more details see 'Maintenance claims - Italy').

Automatic adjustment of maintenance payments for inflation is expressly provided for in the case of divorced couples; case-law has extended this to separated couples.

The measures set out in the court order concerning custody of the children and calculation of maintenance payments for children and for a spouse are open to subsequent amendment. Failure to make the maintenance payments is an offence under Article 570 of the Criminal Code.

Separation with and without responsibility: separated spouses who are not held responsible for the separation continue to enjoy the same inheritance rights as spouses who are not separated.

Spouses held responsible for a separation are entitled only to maintenance from the deceased's estate, and only if at the time of the inheritance proceedings they were entitled to maintenance payments from the deceased spouse (Articles 548 and 585 of the Civil Code).

Other effects: in the event of non-compliance the separation order gives an entitlement to the registration of a judgment mortgage; and, on the entitled person's application, the court may order the seizure of the assets of the liable spouse or issue an order for attachment of earnings.

7 What does the term "marriage annulment" mean in practice?

Under Article 117 *et seq.* of the Civil Code a marriage may be declared null and void in any of a number of disparate cases. The subject is best considered in terms of invalidity, looking at the grounds for invalidity and the law applicable in each case.

A marriage is invalid if it is vitiated by one of the defects set out in law, but the defect must be invoked by bringing an action in court.

An action for annulment of a marriage is not transferred to heirs unless the judgment is already pending. The public prosecutor must take part in the proceedings.

Sources: the substantive rules are contained in Articles 117-129 bis of the Civil Code.

8 What are the conditions for marriage annulment?

A marriage may be invalid for any of the following reasons (Articles 117 *et seq.* of the Civil Code):

1. one of the spouses was still in a previous marriage; the invalidity is absolute and imprescriptible; an application may be brought by either spouse, by a direct relative in the ascending line, by the public prosecutor, or by anyone with a legitimate interest.
2. *impedimentum criminis*; a marriage is entered into by two people one of whom has been convicted of the murder or attempted murder of the spouse of the other; the invalidity is absolute and irremediable, and may be invoked by either spouse, by the public prosecutor or by anyone with a legitimate interest.
3. the marriage cannot be contracted owing to the mental infirmity of one of the spouses; the order declaring such infirmity may be issued even after the wedding, where the infirmity is shown to have existed at the time of the wedding; the marriage may be contested by a guardian, by the public prosecutor or by anyone with a legitimate interest.
4. one of the spouses was not of sound mind (*incapacità naturale*); the marriage can be challenged by a spouse who, though not certified as incompetent, proves that he or she contracted the marriage while of unsound mind. The application may not be lodged if the couple has lived together for more than a year since the applicant regained his or her mental faculties.
5. one of the spouses was under age; an application may be brought by either spouse, by the public prosecutor, or by the parents; the minor's right to lodge the application lapses one year after coming of age;
6. there were ties of kinship, affinity, adoption or affiliation; this ground of invalidity may be invoked by either spouse, by the public prosecutor or by anyone with a legitimate interest, except where a year or more has passed since the wedding and the case is one in which authorisation for the marriage could have been sought despite the ties.
7. duress, fear and error: consent was extorted under duress, or was due to exceptionally serious fear of events outside the spouse's control; or there was mistaken identity, or an error regarding an essential personal prerequisite of the other spouse, pursuant to Article 122 of the Civil Code; applications may be brought by the spouse whose consent was defective on one of these grounds, unless the spouses have lived together for one year after the threat of violence or the source of the fear has come to an end, or after the error was discovered.
8. simulation: the marriage may be contested by either of the spouses where they contracted marriage having agreed not to meet the obligations or exercise the rights deriving from it. The application for annulment must be brought within one year of the wedding; it cannot be brought if the spouses have lived together as husband and wife after the wedding, even for only a short time.

9 What are the legal consequences of marriage annulment?

If the spouses acted in good faith (i.e. they were unaware of the impediment when they married), the marriage is deemed valid until it is annulled, and the annulment is effective only from the time it is ordered (the 'putative marriage' principle (*matrimonio putativo*)). A marriage declared null and void has the effects of a valid marriage with respect to any children, even if both spouses acted in bad faith.

The court may also require one of the spouses to make periodic payments to the other, for no more than three years, where the other spouse does not have adequate means and has not remarried.

Where only one of the spouses acted in good faith, the marriage has effects for the benefit of that spouse and any children. The spouse who acted in bad faith is required to pay fair compensation corresponding to maintenance for three years and to pay further maintenance if no other persons have an obligation to provide support.

10 Are there alternative non-judicial means for solving issues relating to the divorce without going to court?

By way of Decree-Law No 132 of 12 September 2014, which was converted into Law No 162 of 10 November 2014, the Italian government made provision for two new alternative procedures that do not involve the courts:

1) the parties may draw up a negotiation agreement (*convenzione di negoziazione assistita*) in the presence of a lawyer (with the prior authorisation or permission of the public prosecutor), and thus have the possibility of amicably resolving their dispute out of court, with the assistance of lawyers. This possibility is available to spouses seeking to arrive at a mutually agreed separation, to cease the civil effects of their marriage or dissolve it, or to amend the conditions governing their separation or divorce, even if they have children who are not yet of age or who are of age but have serious disabilities or are not financially independent. By going down this route, couples are able to prevent court proceedings from being initiated (Articles 2 and 6);

2) if they do not have any children who are not yet of age or who are of age but have serious disabilities or are not financially independent, spouses have recently been given the possibility of reaching, before a civil registrar, an agreement confirming their legal separation or the dissolution or cessation of the civil effects of their marriage, or amending the conditions governing their separation or divorce (Article 12).

11 Where should I lodge my application (petition) for divorce/legal separation/marriage annulment? Which formalities must be respected and which documents should I attach to my application?

The whole matter has been reformed by Article 3(33) of Legislative Decree No 149 of 10 October 2022, which introduced Title IV-bis (rules for proceedings concerning persons, minors and families) into the Code of Civil Procedure.

As a result of those amendments, a new Section II was introduced in Chapter III of the Civil Code, dealing with proceedings for separation, dissolution or cessation of the civil effects of the marriage, dissolution of civil partnerships and regulation of the exercise of parental responsibility, as well as amendments to the relevant conditions.

Under Article 473 bis 1 of the Code of Civil Procedure, unless otherwise provided for in the law, the application must be submitted to the Court for Persons, Minors and Families (*Tribunale per le persone, per i minorenni e le famiglie*), which decides as a bench; however, the case may be heard and examined by a delegated member of the bench. The court with territorial jurisdiction is the court of the place where the child has his or her habitual residence if measures relating to a minor child are to be taken in the proceedings; in all other cases, the general rules on territorial jurisdiction apply and therefore the criterion is that of the respondent's residence (Article 473-bis.11 of the Code of Civil Procedure). If the respondent is untraceable or resides abroad, the court of the claimant's place of residence has jurisdiction or, if the claimant resides abroad, any court in Italy may hear the case.

The application lodged must contain:

- a) the name of the court to which the application is being submitted;
- b) the first name, surname, place and date of birth, nationality, residence, domicile or dwelling place, and tax identification number of the claimant and respondent, and of the common children of the parties if they are minors or children who are of age but are not financially independent or who have serious disabilities, and of the other persons to whom the applications or proceedings relate;
- c) the name, surname and tax identification number of the legal representative, together with an indication of the power of attorney;
- d) the subject matter of the application;
- e) a clear and concise statement of the facts and points of law on which the application is based, together with

the form of order sought;

f) a list of the evidence which the claimant seeks to rely on and the documents they are attaching to the case file.

The application must also indicate the existence of other proceedings concerning, in whole or in part, the same or related applications. A copy of any measures, including interim measures, already taken in those proceedings must be enclosed with the application.

The documents referred to in the third paragraph of Article 473-bis.12 must always be attached to the application and statement of defence, in particular: a) tax returns for the last three years; b) documentary evidence of ownership of rights in rem over registered immovable property and movable property, as well as shares; c) bank and financial statements for the last three years.

In accordance with the provisions of Article 473-bis.49 of the Code of Civil Procedure, the parties may also apply for the dissolution or cessation of the civil effects of the marriage and the related claims in the application initiating legal separation proceedings. Applications made in this way are admissible after expiry of the period laid down by law for that purpose, and after the judgment pronouncing the legal separation has become final.

The application must be lodged with the competent court together with the documents referred to therein.

Within three days of the application being lodged, the President designates the rapporteur who can be delegated to hear the proceedings, and schedules the hearing for the first appearance of the parties, setting the deadline for the entering of an appearance of the respondent, which must take place at least 30 days before the hearing. The President appoints a special guardian if the respondent is mentally ill or legally incapacitated.

The maximum time between the date on which the application is lodged and the hearing is 90 days.

Article 473-bis.51 governs the procedure regarding joint applications brought by the parties.

A joint application relating to the proceedings referred to in Article 473-bis.47 must be lodged with the court of the place of residence or domicile of either party. The application must be signed by the parties and must also contain details of the income and assets of the last three years and the costs to be borne by the parties, as well as the conditions attached to offspring and economic relationships. By means of the application, the parties may also regulate their property relationships, in whole or in part. If they wish to avail themselves of the option of replacing the hearing with the filing of written notes, they must request this in the application, stating that they do not wish to reconcile and filing the documents referred to in the third paragraph of Article 473-bis.13. Following the filing, the President schedules the hearing for the parties to appear before the judge-rapporteur and arranges for the documents to be sent to the public prosecutor, who gives their opinion no later than three days before the date of the hearing. At the hearing, the judge, after hearing the parties and taking note of their wish not to reconcile, refers the matter for decision. The judge can always request any clarifications if necessary and ask the parties to file the documents referred to in the third paragraph of Article 473-bis.12. The bench issues an order by which it approves or takes note of the agreements between the parties. If the agreements conflict with the interests of the children, it summons the parties, indicating the amendments to be adopted, and, in the event of an inappropriate solution, rejects the application as it stands. In the event of a joint application to amend the conditions relating to the exercise of parental responsibility in respect of children and financial contributions to them or the parties, the President designates the rapporteur, who, having obtained the opinion of the public prosecutor, reports in chambers. The judge orders that the parties appear in person when they jointly request it or if clarifications are needed regarding the new conditions proposed.

12 Can I obtain legal aid to cover the costs of the procedure?

It is possible to obtain legal aid (*patrocinio a spese dello Stato*) and therefore to have legal representation without payment of the lawyer's fees and the other court costs. Legal aid is also available to foreign nationals lawfully residing in Italy. The eligibility conditions can be found in Law No 217 of 30 July 1990 and in the factsheet on legal aid. Applications for legal aid must be submitted to the relevant bar association (*consiglio dell'ordine degli avvocati*); see the bar association websites (e.g. for the bar association of Rome) and the Ministry of Justice's website.

Sources: Law No 217 of 30 July 1990, as amended by Law No 134 of 29 March 2001.

13 Is it possible to appeal against a decision relating to divorce/legal separation/marriage annulment?

It is possible to appeal against legal separation, divorce or annulment orders. The appeal is brought by application, which must contain the information prescribed in Article 342 of the Code of Civil Procedure.

14 What should I do to have a decision on divorce/legal separation/marriage annulment issued by a court in another Member State recognized in this Member State?

Decisions given in a Member State before 1 August 2022 are implemented in the other Member States under the uniform rules on recognition laid down in Regulation (EC) No 2201/2003 ('Brussels IIa'). Decisions given after 1 August 2022 are recognised in the EU Member States under the subsequent Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction and the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction ('Brussels IIb').

Under both Regulations, recognition of judgments in matrimonial matters is automatic. Divorce, separation and annulment decisions against which it is no longer possible to appeal in the Member State of origin are implemented, together with the relevant certificate, without it being necessary to update the entries in the civil register of the requested Member State. Extrajudicial agreements in matrimonial matters (such as negotiation agreements concluded at the end of the procedure laid down in Decree-Law No 132 of 12 September 2014, converted into Law No 162 of 10 November 2014) are also implemented within the EU in the light of the Brussels IIb Regulation.

Any interested party may apply for a declaration to the effect that the foreign judgment must or must not be recognised; the grounds for refusal of recognition are expressly and comprehensively provided for in the applicable regulation. The action, in the form of an application to the court (*ricorso*), must be lodged with the court of appeal (*corte di appello*) with territorial jurisdiction in the place of implementation of the ruling as provided by the internal law of Italy. The court rules without delay, with or without hearing the other party, and the ruling is notified to the applicant. In accordance with Article 30 bis of Legislative Decree No 150 of 1 September 2011, as amended by Legislative Decree No 149/2022, the proceedings are conducted in chambers, without the other party.

15 To which court should I turn to oppose the recognition of a decision on divorce/legal separation/marriage annulment issued by a court in another Member State? Which procedure applies in these cases?

An appeal may be brought against a ruling delivered in chambers within 60 days of service of the order.

The ruling delivered on this objection may in turn be appealed before the Court of Cassation (see the Annexes to the Regulation).

16 Which divorce law does the court apply in a divorce proceeding between spouses who do not live in this Member State or who are of different nationalities?

Italy is party to Regulation (EU) No 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (Rome III). The law applicable to divorce and legal separation proceedings relating to situations involving foreign elements is the one chosen by the parties in accordance with the provisions of Articles 5, 6 and 7 of the Regulation and, in the absence of a choice, the one determined by the connecting factors provided for in Article 8. The uniform limits on the application of foreign law laid down by that regulation come into play.

Article 31 of Law No 218 of 31 May 1995 reforming Italian private international law, as amended by Legislative Decree No 149/2022 and applicable whenever uniform European private international law does not apply, also refers in full to the rules laid down in Regulation No 1259/2010, specifying that the parties may designate the applicable law by mutual agreement expressed in writing, within the meaning of Article 5 thereof, and that the designation may also take place during the proceedings, until the conclusion of the hearing for the first appearance of the parties, even by means of a statement made in the minutes by the spouses, either in person or by means of a special legal representative.

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■ Last update: 09/10/2024

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